

FILED
GREAT FALLS, MONTANA

2012 OCT 9 AM 11:41

PATRICK E. DUFFY, CLERK

BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR 02-133-BLG-SEH
)	
Plaintiff,)	
)	
vs.)	ORDER DISMISSING § 2255 MOTION
)	AND DENYING CERTIFICATE OF
JACKSON BRYANT BAUGUS,)	APPEALABILITY
)	
Defendant.)	

On October 1, 2012, Defendant Jackson Baugus filed a motion, purportedly under 18 U.S.C. § 3742, seeking to “appeal” certain sentencing guideline determinations in his case. The district court lacks jurisdiction over appeals. In substance, the motion seeks to correct the sentence. It is, therefore, recharacterized as a motion under 28 U.S.C. § 2255 (authorizing filing of motion where defendant claims “sentence was in excess of the maximum authorized by law”).

As such, the motion is successive. Baugus previously filed a § 2255 motion on January 24, 2008. The motion and a certificate of appealability were denied on October 1, 2008. The Court of Appeals denied a certificate of appealability on December 21, 2009. This Court lacks jurisdiction to consider an unauthorized successive motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam); 28 U.S.C. §§ 2255(h), 2244(b)(3).

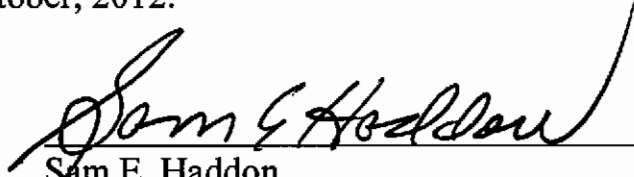
A certificate of appealability is not warranted as there is no doubt about the nature of the motion or this Court's lack of jurisdiction to hear it. *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000) (discussing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

ORDERED:

1. Baugus's motion (doc. 248) is RECHARACTERIZED as a second or successive motion under 28 U.S.C. § 2255.
2. So recharacterized, the motion is DENIED.
3. A certificate of appealability is DENIED.
4. The Clerk of Court shall enter, by separate document, a judgment of dismissal.

5. The Clerk shall terminate all pending motions in this case and shall close the civil file.

DATED this 9th day of October, 2012.



Sam E. Haddon
United States District Court